

LAND RIGHTS IN THE KYRGYZ REPUBLIC

AND

THEIR REGISTRATION UNDER
THE PILOT IMMOVABLE PROPERTY
REGISTRATION PROJECT

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ABSTRACT

Since August 1995, ICMA, USAID, and World Bank consultants have been working with officials in the Kyrgyz Republic to develop a legal basis for the registration of rights in immovable property. The registration law was recently introduced into parliament and the next step is to implement a pilot immovable property registration project that will lay the institutional foundation for a registration system. A major task in designing this system lies in determining what rights in immovable property currently exist and establishing a typology for recording these rights on the registration cards. The most difficult task will be to decipher the meaning of land-rights assigned as a result of the various privatization initiatives. Land rights have been in a state of constant flux due to successive land reform initiatives launched from 1991-94. Although a draft Land Code is expected to be introduced to parliament in the second quarter of 1996, the 1991 Code remains the basis of most existing rights in land. These rights are briefly explained and suggestions as to how they might be recorded in light of the draft Land Code are offered.

EXECUTIVE SUMMARY

This report is based on field research conducted in February of 1996 in the Kyrgyz Republic and a brief analysis of land legislation in May, 1996. Visits to farms and local offices for recording rights in land and immovable property supplied most of the information contained in the report. Land rights in the Kyrgyz Republic have evolved since the passage of the 1991 Land Code, which defined the basic forms of land tenure as possession, use, and lease. These terms are partially defined by the type of land use practiced on a parcel and the also by the legal status of the user (individual, enterprise, organization).

Two types of possession exist: 1) permanent possession is a right reserved for commercial agricultural enterprises and those public organizations engaged in agricultural production, and 2) forestry. Such rights are not granted to citizens, only to legal entities. On the other hand, lifetime heritable possession is granted only to citizens for the operation of a peasant farm and/or construction of a dacha or home. Land around houses and private dwellings is likewise granted to citizens in lifetime heritable possession.

The right to land use is granted to citizens, non-agricultural enterprises, and public organizations. Though not specifically stated in the Code, it appears that citizens may be assigned land to support non-commercial agricultural production. It is not specified in which cases land is assigned for use by non-agricultural enterprises. There are two categories of use: permanent use is assumed when the land grant has no fixed term; temporary use is divided among short-term use (up to 5 years), long-term use (5-10 years), and long-term use for pasture land (to 25 years). Both use and possession are granted by the Council of People's Deputies at the local level.

Lease arrangements have a long-term character, over five years. Land taken in lease may be assigned by the local COPD or may be taken on the basis of an agreement between two farm enterprises or a farm enterprise and individual workers. These are the rights that will be encountered on documents presented for registration under the pilot project. It is recommended that they be classified in accordance with those rights stated in the draft Land Code. In this case, three categories of land tenure would remain and be recorded on the registration cards: lifetime heritable tenure, use, and lease.

Another challenge for the pilot project will be assessing the validity of documents presented for registration, as a lack of funds at all levels has resulted in a shortage of permanent documents proving rights in land. Thus, land-users will present a confusing variety of documents for registration that will not necessarily correspond to the forms approved by the government as evidence of use-rights to land.

1. INTRODUCTION

The basic legislation governing land rights granted in the Kyrgyz Republic is the Land Code of 1991, which introduced several new forms of land tenure. Though land was still owned by the State, the Code stated that it would be given in use to enterprises, organizations, and individuals under various tenure arrangements. The rights outlined in this 1991 Land Code have been superseded by subsequent decrees, government resolutions, and ministerial orders that deal with agricultural land in an attempt to consolidate land reforms in the country and facilitate the development of a land market. Such changes to the 1991 Land Code are reflected in a new draft Land Code, which is slated for introduction to the parliament in the second quarter of 1996.

USAID has expressed interest in funding a pilot immovable property registration project to lay the ground work for creating a mechanism to secure these rights and facilitate the development of an active immovable property market. Key activities of the pilot project will be to review documents issued as proof of rights in land, to determine the meaning of the rights recorded on the documents (as the rights will have been issued on the basis of the 1991 Land Code), and to register these rights in such a way that is compatible with the rights elaborated in the 1996 draft Land Code.

A key component of the registration system will therefore be the registration card that will record the rights held in an object of immovable property. The design of the registration card must proceed with a view to fitting the existing rights in land - those already granted under the provisions of the 1991 Land Code and subsequent legislation - into a framework that is compatible with that set out in the 1996 draft Land Code. The same exercise will need to be done for existing rights in buildings, homes, and apartments when the registration team has access to legislation and information on those rights. In other words, the pilot registration team will need to review existing rights and devise a typology for recording those rights on the registration cards that is consistent with the legislation governing rights in non-land immovable property (buildings, homes, apartments). This report will cover only rights in land, as only materials and information on land rights are available at this time.

2. BACKGROUND

Several key points must be understood before discussing the 1991 Land Code. First, under the Constitution of the Kyrgyz Republic the State retains ownership of all land. The rights described in the 1991 Land Code and, incidentally, the 1996 draft Land Code are therefore use-rights - meaning there is no private ownership of land by legal or physical persons in the Kyrgyz Republic. A constitutional amendment allowing private land ownership has been discussed and will possibly be introduced to the parliament within the next year. Secondly, purchase, sale, mortgage, and exchange of land parcels is prohibited by the 1991 Land Code. The 1996 draft Land Code however does permit such

transactions and field research indicates a widespread view among holders of land use-rights that the rights granted are freely transferable. Even if such transactions are illegal at present, all indications are that they will soon be legalized with passage of the draft Land Code.

The team implementing the pilot registration project should also be aware of the land reform initiatives undertaken by the government since 1991, as these have had a profound impact on the allocation of land, number of land users, and size of land parcels, primarily in the agricultural sector. The passage of the 1991 Law on Peasant Farms introduced a new form of land tenure to the regime of agricultural land-holdings. Under this law individuals may be granted parcels of land in lifetime heritable tenure or lease for the operation of a peasant farm¹. This marked the first time a non-state entity could be granted rights in land used for commercial agricultural production. This land may be passed on in inheritance, but purchase-sale, mortgage, or other exchange of a peasant farm is forbidden according to the 1991 law.

The Law on Peasant Farms was followed by the passage of the 1991 Land Code a few months later, which outlined various land rights to be granted to enterprises, organizations, and individuals, depending on the intended use of the land parcel. Enterprises and organizations are given rights to land surrounding their buildings. They may also take land for agricultural production and operation of a subsidiary farm. Families are accorded certain rights to land for gardening, raising domestic animals, and construction of a house. Important provisions in the 1991 Land Code include: 1) automatic transfer of the right of possession in land adjacent to a residential building when the ownership of the building is transferred, and 2) right of possession of the land parcel is divided in proportion with ownership interest in the structure for buildings that are collectively owned. Additional provisions for allocation of forest and water fund land are made, but will not be elaborated here.

In 1994 a presidential decree on land and agrarian reform stated that each rural citizen was eligible for a share of arable land in his or her village. These grants would be for 49 years with the priority right of extension given to the holder of the right upon expiry. These paper shares, recorded in the name of the household head, were to form the basis of new farm enterprises. Families were encouraged to pool enough shares for a minimum of 10 hectares of land, apply for a physical parcel of land in their village, and form a small farm enterprise. Land parcels would be allotted to such enterprises from the holdings of state, collective, and cooperative farms, in accordance with the total amount of the pledged paper shares. The enterprise would receive a parcel of land to use for 49 years.

The 1994 decree provided that the land shares could be the subject of purchase-sale, mortgage, inheritance, and lease transactions. Note that this refers to ~~the~~ shares allocated

¹ These farm units differ from those peasant farms formed out of the later reorganization of state, collective, and cooperative farms in 1994 to the present. Such farm units hold land in permanent possession and usually comprise several families, while peasant farm formed under the 1991 Law on Peasant farms hold land in either lease or lifetime heritable tenure, and are formed on the basis of one family.

to individual households that are not physically demarcated on the ground.² The decree did not address these transactions with regard to physical parcels allocated to farm enterprises. However, since the physical parcels are formed on the basis of the pooled land shares, the sale of all shares comprising a farm enterprise's physical land could be interpreted as the sale of a physical parcel.

In late 1995, the president pushed for further change in agricultural land relations and decreed that land use-rights allocated in 1994 would be extended to 99 years. Again, it is not clear whether this provision presently applies to urban land. However, it is written in the 1996 draft Land Code as such, and likely does apply to both agricultural and urban land assigned to enterprises and individuals in permanent use.

3. RIGHTS ELABORATED IN THE 1991 LAND CODE

There are five types of land tenure specified in the Land Code of 1991: lifetime heritable possession, permanent possession, permanent (indefinite) use, fixed-term use, and lease. Since the State retains possession of all the land, it grants these rights to legal and physical persons through the Councils of People's Deputies at the various levels of government (i.e. rural council, rayon council, oblast council, parliament). The type of rights granted on a parcel of land depends on the designated use of the land and the nature of the applicant (physical or juridical person). Assuming passage of the draft 1996 Land Code, land use-rights will no longer be allocated administratively, but will be freely bought, sold, and exchanged.³

3.1 Possession (*vladeniye*)

The 1991 Land Code defines two types of possession: lifetime heritable possession and permanent possession.

Lifetime heritable possession—Land parcels are granted to citizens by the local Council of People's Deputies (COPD)⁴ for the following uses:

- operation of a peasant farm
- operation of a personal plot (*lichnoye podsobnoye khozyaistvo* or *LPKh*)
- construction of living quarters (land around house)
 - construction of a dacha
 - inherited or purchased homes
 - traditional field-works

² In principle these are not surveyed parcels. However, in some rayons, administrations have chosen to survey the holdings of each family so that everyone knows where his or her land is located.

³ An outstanding question is the land of peasant farms, use and disposal of which is still regulated by the 1991 Law on Peasant Farms. Recall that transactions with these parcels, save for inheritance, are prohibited. Legalizing transactions with such parcels would require an amendment to the peasant farm law, or a clause in the draft Land Code stating that such transactions are permitted.

⁴ A Council of People's Deputies is commonly referred to as the Council *skensh*.

In all cases land is assigned to the household with the exception of parcels assigned for peasant farming, which are assigned to an individual who is then considered the head of the peasant farm. Note that lifetime heritable tenure only pertains to households and individuals, as land allocated to cooperatives or work collectives may not be passed on in inheritance.

The size of these allocations is determined by the local Council of People's Deputies. There is no fixed period over which the use-right extends. The land may be kept in one family for generations as long as the users comply with the conditions stated in the Land Code and Law on Peasant Farms.

Permanent Possession (*postoyannoye vladeniye*) - Collective and state farms, other state, cooperative, and public enterprises, institutions, organizations, and religious orders may be assigned land in this form of tenure for the purposes of forestry and agricultural activities. This form of tenure appears to have been reserved for agricultural production only.

3.2 Use (*pol'zovaniye*)

There are two types of use, permanent and temporary, or in other words, indefinite and fixed-term. **Permanent or indefinite use (*postoyannoye pol'zovaniye*)** is land allocated for an indefinite period, and **temporary or fixed-term use (*remennoye pol'zovaniye*)** may be assigned for short-term (1-5 yrs.) or long-term use (5-10 yrs.). Pasture land may be allocated to collective, state, peasant farms, and other organizations in use for a period of 25 years for driving livestock

Land is given in use to:

citizens for gardening, producing animal feed, hay-making, and pasturing livestock. Land parcels are allocated from the land administered by the corresponding local COPD

industrial, transport, and other non-agricultural state, cooperative, and public enterprises, institutions, and organizations

defense organizations

religious organizations

joint-venture enterprises, and organizations comprised of both domestic and foreign legal entities

3.3 Lease (*arenda*) - Land is allocated in lease to the following entities by the following government organs for a period of no less than five years:

citizens, by the village, city, and rayon COPDs

collective and state farms, other state, cooperative, and public organizations by the city and rayon COPDs
joint-ventures, and foreign organizations by the Council of Ministers

4. UNDERSTANDING EXISTING RIGHTS IN LAND

The wide array of rights defined by the 1991 Land Code seem difficult to comprehend much less present in a systematic order. Thus the rights that seem less clear will be discussed briefly here. Of the rights described above, the lifetime heritable possession is clearly distinct from the other types. This right may be passed on to an heir upon the death of the holder of that use-right. Lifetime heritable possession apparently applies to land around houses, dachas, or other living quarters. Additionally, this tenure category encompasses the land assigned to peasant farms (also thought of as individual family farms) as well as land assigned to individuals for raising domestic animals and gardening. The latter land is intended for apartment dwellers or simply city dwellers who do not have access to a plot for subsistence food production.

The category of permanent possession is reserved apparently for: a) agricultural enterprises engaged in commercial agricultural production, and b) organizations and institutions using the land for agricultural or forestry operations. Farm enterprises, granted land out of the 1994 land reform are given land in permanent possession. Agricultural enterprises apparently may not hold land in permanent use, as that form of tenure appears reserved for non-agricultural enterprises. Note that no time period is specified in the 1991 Land Code for land granted in permanent possession and permanent use. Also, land assigned in possession and use is granted free of charge. The user has only to pay the land tax and abide by certain conditions of land use in order to keep the land rights.⁵

Land assigned in lease would appear subject to annual rent payments. Although it resembles fixed-term use, as it is assigned for a definite period, the assumed difference is that a rental fee is paid on leased land while land in allocated in use is considered granted to the user free of charge. The issue of rent payments on leased land should be clarified. For instance, on land leased to the user by the State the only payment for use may be the land tax, whereas an enterprise leasing-out land would charge an actual rent.

The following sections discuss types of rights granted for different types of land use. Table 1 provides a sampling of land use-rights granted to different enterprises. This is by no means a complete list of all land uses and all land users, but is thought to capture the majority of both.

Table 1: Types of Land Tenure Assigned for Various Categories of Land

⁵ There are additional grounds for termination of land use-rights such as ecological degradation of the land causing decreased productivity and soil fertility, non-use or use of the land parcel for activities incompatible with the designated use, and irrational use of pasture land causing degradation.

Use	Agricultural enterprises	Enterprises (non-ag.)	Public org. and assns.	Citizens
Agricultural Land				
Commercial agricultural production	permanent possession and lease	use	permanent possession	lifetime heritable possession and lease (for operation of peasant farm)
Personal subsidiary plot	NA	NA	NA	lifetime heritable possession
Subsidiary farming	NA	use	use	NA
Truck farming and feed production	NA	NA	NA	temporary use
Pasturing livestock and hay-making	NA	NA	NA	temporary use
Gardening and raising livestock (for non-farm residents)	NA	NA	temporary use	lifetime heritable possession
Urban Land				
Land for “long-term” urban structures (buildings, homes)	NA	use	use	use
Temporary structures (kiosks, trading stalls)	NA	temporary use	temporary use	temporary use
Public land for “light” structures (trading stalls, advertising structures)	temporary use	temporary use	temporary use	temporary use
Land for agricultural use within city limits	not specified	not specified	not specified	not specified
Land of Undefined Category				
Land around house for structures	NA	NA	NA	lifetime heritable possession
Land for dacha construction	NA	NA	NA	lifetime heritable possession

NA = Land is not allocated to the enterprise for the stated use.

4.1 Agricultural Land

Agricultural land is allocated ~~in~~**permanent possession** to all farms - state, collective, cooperative, joint-stock, associations of peasant farms, and peasant farms established out of the 1994-95 farm reorganization program - except for those peasant farms established according to the 1991 Law on Peasant Farms.

Land allocated to these enterprises for the purpose of commercial agricultural production is held in permanent possession. Agricultural enterprises, according to the 1991 Land Code, are not allocated land in use with the exception of pasture assigned for a 25 year period. Farms may also ~~dease~~**lease** in land from other enterprises and from the State.

Individuals establishing peasant farms under the guidelines of the 1991 Law on Peasant Farms may choose to hold land ~~in~~**lifetime heritable possession or lease**. Generally, units formed by a farm employee exiting a state or collective farm (or cooperative) to form a peasant farm received land in lifetime heritable possession. In these cases a land parcel was assigned from the lands of the farm enterprise where the person used to work. Those peasant farms established on a lease-hold basis receive land from a Special Land Fund, which is managed by the rayon COPD. Lease-hold peasant farms are typically formed by persons not employed on the state or collective farms. Peasant farms may also ~~lease~~**lease** in land. Public organizations may be assigned land **permanent possession** for the purpose of agricultural production. Such entities may also lease-in land.

4.2 Land for Non-Commercial Agricultural Production

For purposes of maintaining a garden, growing feed, and pasturing domestic animals, citizens may be allocated land ~~in~~**use** to citizens.

4.3 Land around houses (*priusadebniy uchastok*) dachas

This land is allocated to citizens in lifetime heritable possession. It is presumably recorded in the household head's name, but considered joint (collective, common) property of the household.

4.4 Urban land around buildings, factories

Non-agricultural enterprises, factories, and public organizations are assigned land ~~in~~**use, probably permanent use**. Transport and industrial enterprises as well as defense organizations may hold land in use. Land around structures is assigned with reference to the perceived "life" of the structure. Land "attached" to permanent structures, such as buildings, is assigned in permanent (indefinite) use. Land "attached" to temporary structures, such as kiosks and market stalls, is assigned in temporary (fixed-term) use.

4.5 Rights enshrined in the draft land code

Fortunately the draft Land Code, which will be introduced to parliament soon, greatly simplifies the types of rights held in land by eliminating the various sub-categories of the main tenure types. Land may be held in use or lease. Land held in use is considered given for a 99 year period, while leased land may be done on a short-term (1-5 yrs.) or long-term (5-25 yrs.) basis. Additionally, the lifetime heritable form of possession still holds for citizens according to the same criteria as listed in the 1991 Land Code.

5. PILOT REGISTRATION PROJECT AND RECORDING OF RIGHTS

Since the draft Land Code will likely replace the existing code as the document governing land relations, it is recommended that the pilot project fit the existing rights into the new typology proposed in the draft Land Code. Thus, there will be three types of rights in land recorded: lifetime heritable possession, use (99 yrs.), and rent (1-25 yrs.).

Although the rights written on documents presented for registration during the pilot project will correspond with those outlined in the 1991 Land Code, they should be registered in accordance with the rights assigned under the draft Land Code. Thus, land rights should be registered in lifetime heritable possession, use, and rent. Also, an ownership category should be added, as there has been much talk of amending the constitution to allow private property in land.

It is recommended that permanent use and permanent possession be recorded as use. The tricky issue is what to do with the category of temporary use of land. Again, this apparently differs from a lease-hold in that no payment is made for the use of the land other than the land tax. It is granted to enterprises for up to 10 years and 25 years if pasture. It is not clear whether the government intends to extend all fixed-term use arrangements to the 99-year term or change them to lease agreements. Until this issue is resolved, no recommendation can be made on how to register fixed-term use on the registration card. This is likely elaborated in legislative acts passed after the 1991 Land Code. Lease arrangements should continue to be recorded as lease arrangements, as should lifetime heritable possession.

More challenging is the question of recording whether the rights are held individually, collectively, or by a household. This is not spelled out in the draft Land Code, though the 1991 Land Code does refer to this by stating that land granted in lifetime heritable possession to citizens is considered granted to the family or household with the exception of land granted for the creation of a peasant farm, which is granted to an individual. This is probably spelled out in a law on property and perhaps in the Civil Code. A brief attempt will be made to anticipate how these use-rights are held (i.e. individually, collectively, jointly) and recommendations should only be considered after reviewing that document.

Land around houses and dachas is likely assigned to the household, but considered joint property of both spouses. Land granted to collective and cooperative enterprises and organizations is likely held collectively. Further, land granted to agricultural enterprises

(other than the early peasant farms) can probably be considered held in collective use, since a parcel of land allocated to the enterprise is created by pooling the land shares of all members. Land assigned in use to citizens for gardening, hay-making, and pasturing domestic animals is likely assigned to the household. Use-rights to urban land around buildings, stores, and factories is probably assigned to the enterprise, in which case it is held collectively or individually. These points require further clarification and an exact definition of the possible ways non-land assets can be held before a decision is taken on recording such information.

A final fact that should be brought to the attention of the technical assistance team is the problem of presenting evidence of rights granted. Field research in February 1996 revealed that many farm enterprises and individual family farms lack permanent documents proving their use-rights. They have in cases been issued temporary photocopies of the permanent “patent” or a set of papers containing all analogous information that is found on the State Akts. However, the pilot registration team must be prepared to handle this uncertainty and would be wise to establish a set of procedures for checking the validity of the documents presented. This appears to be an obvious, elementary precaution, however it is complicated by the fact that the situation may well differ from rayon to rayon.

6. CONCLUSION

Since 1991, the Government of the Kyrgyz Republic has undertaken several initiatives aimed at expanding rights in land for individuals, enterprises, and organizations. The foundation of this initiative lies in two 1991 laws: the Law on Peasant Farms and the Land Code. Changes in land rights were introduced by presidential decrees of 1994 and 1995 and those changes are reflected in the 1996 draft Land Code. Though the State retains ownership of all land, it grants use-rights to individuals, enterprises, and organizations for indefinite and fixed periods depending on the type of use and the land user.

Legislation has slowly been evolving in support of a market in land and immovable property. The recent Law on Registration of Rights in Land and Immovable Property was introduced to the parliament. The next step is to work on the institutional foundation for creation of an immovable property registration system. An important issue in system design will be capturing all rights in land issued thus far and registering them in such a way that the right has a basis in active legislation and its meaning is clear to potential buyers and sellers. It is the challenge of the pilot immovable property registration project to record existing rights in land in a way that is compatible with anticipated changes in land legislation, such as the 1996 draft Land Code.